

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

## **MEMORANDUM AND ORDER**

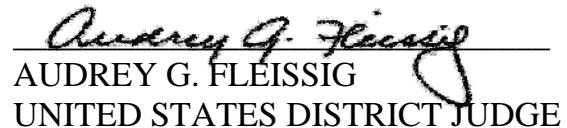
This putative class action, removed to the Court on February 22, 2017, arises out of Defendant’s alleged disclosure of its online customers’ credit card details to third parties without the customers’ knowledge or consent. The matter is now before the Court on Plaintiff’s motion for leave to file a second amended complaint. Plaintiff’s proposed amendment adds two claims under the federal “Wiretap Act,” 18 U.S.C. § 2511, and removes claims for violation of Missouri’s computer tampering statutes, violation of the Missouri Merchandising Practices Act, and invasion of privacy. The motion was filed before the deadline to amend pleadings as set forth in the Case Management Order, and discovery does not close until May 31, 2018.

Defendant opposes the motion, arguing that the amendment would prejudice it by changing the nature of the lawsuit and requiring additional discovery. Defendant also suggests that the proposed amendment would be futile, but Defendant states that the futility issue may be more fully addressed in a motion to dismiss, should the Court grant Plaintiff leave to amend.

Under Federal Rule of Civil Procedure 15(a), a court “should freely give leave [to amend pleadings] when justice so requires.” Notwithstanding this liberal standard, a court may deny leave to amend where the proposed amendment would be futile or cause unfair prejudice to the opposing party. *Crest Const. II, Inc. v. Doe*, 660 F.3d 346, 358 (8th Cir. 2011). Given the very early stage of this case and the overlap of facts underlying the claims in both the original and proposed amended complaints, the Court does not believe that Defendant would be unfairly prejudiced by the proposed amendment. And as Defendant suggests, the merits of Plaintiff’s amended claims may be addressed at a later stage.

Accordingly,

**IT IS HEREBY ORDERED** that Plaintiff’s motion for leave to file a second amended complaint is **GRANTED**. ECF No. 16. The Clerk of Court shall detach ECF No. 16-1 and file it as Plaintiff’s Second Amended Complaint.

  
AUDREY G. FLEISSIG  
UNITED STATES DISTRICT JUDGE

Dated this 10th day of July, 2017.